



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 09, 2022

IN THE MATTER OF:

Appeal Board No. 624783

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause, and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 1, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 13, 2022 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a medical center as a senior clerk, at the front desk in the pediatrics department, until October 1, 2021. Her duties included interacting with patients and care givers while checking the patients in and out and collecting co-payments. On September 17, 2021, the claimant first received a notification that she was required to be vaccinated by September 27, 2021, or face discharge. By an employer memo dated September 21, 2021, the claimant was informed that the New York State Department of

Health issued a requirement that all hospitals develop and implement a policy mandating employee COVID-19 vaccination, with limited exceptions for medical reasons or those who have submitted a religious exemption request.

On September 26, 2021, the claimant submitted a religious exemption request. On September 29, 2021, the claimant was notified that her religious exemption request was denied. She was further notified that she was being placed on unpaid suspension on September 30 and was encouraged to obtain the first dose of the vaccine as soon as possible to continue her employment. Thereafter, she resubmitted her religious exemption request. Shortly thereafter, the employer notified her that her request was denied and that she was still under suspension. The claimant refused to become vaccinated. On October 30, 2021, the employer sent the claimant a letter discharging her for noncompliance with the employer's vaccination policy.

OPINION: The credible evidence establishes that the claimant's employment ended because she refused to receive the COVID-19 vaccine, a condition of continued employment. There is no dispute that the claimant was aware of this requirement and its applicability to her as a healthcare worker, or that she was further aware that she could not continue her employment if she did not comply. It is further undisputed that the employer discharged the claimant because she chose not to get the vaccine and that if she had been vaccinated as required, she could have continued in her employment.

However, because the claimant was aware of the vaccine mandate and that she could be separated from employment if she chose not to be vaccinated, we find that she provoked her own discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no choice but to discharge her. A provoked discharge is considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits (see, *Matter of DeGrego*, 39 NY2d 180 [3d Dept.1976]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established for the purpose of complying with the State of New York's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic. The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease (see *Matter of Garcia v. New York City Dept. of Health & Mental*

Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; Matter of C.F. v. New York City Dept of Health & Mental Hygiene, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and Matter of New York City Mun. Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo, 64 NY2d 233, 237-40 [1984]). Because of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of their employees and patients, the emergency regulation requiring all healthcare employees to be vaccinated against COVID-19 was justified by a compelling governmental interest. We therefore find that the employer's requirement that the claimant be vaccinated was a legitimate obligation and that the employer had no choice but to end the claimant's employment when she refused to meet it.

We now turn to the claimant's contention that her refusal to vaccinate was based on religious concerns for which she sought, and was denied, an exemption. We note that the Supreme Court of the United States has held that "... an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. In the case at hand, there is no allegation that the state cannot regulate the healthcare industry, that the law is not generally applicable to those in that industry, or that it targeted a specific religion. Further, in *Dr. A et al v. Hochul*, 142 S.Ct. 552 (2021), the Court denied an application for injunctive relief in a challenge to New York State's law removing religious exemptions from its COVID-19 vaccine mandate for hospital workers. Additionally, the Second Circuit in *We the Patriots USA, Inc. v. Hochul* 2021 U.S. App. LEXIS 32921 (2d Cir 2021), upheld New York's COVID-19 vaccine mandate for hospital employees without religious exemptions. In light of the

caselaw, we are not persuaded by the claimant's contention that the employer did not fully explain why her exemption request was denied.

Under these circumstances, we find that the claimant's personal beliefs do not outweigh the employer's interest in protecting the health and safety of its employees and patients. The claimant therefore has not substantiated that she had good cause for ending continuing employment (See Appeal Board No. 620438). We accordingly conclude that she was properly denied benefits. In light of the foregoing, the issue of misconduct is academic.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER